

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

**In Re: National Hockey League
Players' Concussion Injury
Litigation**

MDL No. 14-2551 (SRN)

This Document Relates to All Actions

PRETRIAL ORDER NO. 5

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SUSAN RICHARD NELSON, United States District Court Judge

The Judicial Panel on Multidistrict Litigation has transferred actions in the above-captioned matter to this Court for coordinated and consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407 as part of nationwide concussion injury litigation involving the National Hockey League. (Transfer Order [Doc. No. 1].) On December 18, 2014, the parties appeared before this Court for a status conference. This Order memorializes the parties' agreements and the Court's rulings at the December status conference.

I. Proposed Deposition Protocol

While the parties generally agree to much of the protocol concerning depositions, they disagree about Defendant's proposal for the pre-designation of deposition exhibits. Defendant argues that this procedure, similar to that adopted by this Court in Dryer v. National Football League, 09-CV-2182 (PAM/SRN), will facilitate efficient and orderly depositions in this litigation. Plaintiffs oppose it, arguing that pre-designation unfairly

provides opposing counsel with an overview of the deposing attorney's deposition strategy and may impact the deposing attorney's ability to elicit useful testimony.

As to the areas of agreement between the parties, the proposed protocol is acceptable and will be reflected in a separate order issued by the Court. However, the Court takes under advisement the area of disagreement concerning pre-designation of deposition exhibits, and will issue a ruling at a later date.

II. Proposed Protocol for the Production of Hard Copy Documents and Electronically Stored Information ("ESI")

The parties are in agreement concerning the protocol for the production of hard-copy discovery and the production of ESI. The Court will issue a separate order, reflecting the parties' agreement, concerning this production protocol.

III. Medical Records Disclosure

The parties disagree about the proposed scope of Defendant's inquiry concerning Plaintiffs' medical records. Defendant will promulgate an interrogatory and request for production prior to December 25, 2014, Plaintiffs will file objections, and the parties will then brief the issue. The parties shall meet and confer in order to agree upon the dates on which Plaintiffs' objections will be due, as well as the briefing schedule, with the understanding that any motion with respect to this matter will be heard at the February 5, 2015 status conference. The parties shall relay the agreed-upon deadline dates to the Court.

IV. Proposed Class Certification Schedule

The parties' proposed class certification schedule is acceptable to the Court, with the understanding that class certification fact discovery and merits discovery will not be bifurcated. The Court will issue a separate order related to the scheduling of issues concerning class certification.

V. Proposed Protective Order

The parties' proposed Protective Order is acceptable and will be separately issued by the Court.

VI. Proposed Privilege Protocol

The parties' proposed privilege protocol is acceptable to the Court. The Court will issue a separate order concerning privilege protocol.

VII. Defendant's Motion to Dismiss

The hearing on Defendant's Motion to Dismiss will be held in conjunction with the next status conference on January 8, 2015, at 9:30 a.m.

VIII. Class Member Administrative Participation in Litigation

Plaintiffs will submit their proposal to the Court concerning a "Notice of Interest" administrative filing. The parties will address this at the February 5, 2015 status conference.

IX. Attorney Time Reporting

The Court finds that Plaintiffs' attorney time reporting is acceptable to date.

X. Next Status Conference

The next status conference will be held on **January 8, 2015** at **9:30 a.m.**

Dated: December 19, 2014

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Court Judge